IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2708 OF 1992

Smt.Yamunabai Kalangauda Patil,
Age 79 years, Occ.-Household,
R/at. 1040, Budhwar Peti,
Pune - 411 002. ... Petitioner.

Vs.

1. Smt.Fatimabi Hasanbhai Shaikh,
   Age 74 years, Occ : household,

2. Shri Iqubal Hasanbhai Shaikh,
   Age 39 years, Occ : Business,

3. Shri Jujanin Sasanbahi Shaikh,
   Age 32 years, Occ:Business,

4. Shri Junaid Hasanbhai Shaikh,
   Age 26 years, Occ: Business,
   All Residing at 549, Raviwar Peth,
   Pune 411 002. ... Respondents.

Mrs.Suhasini Mutalik for the petitioner.
Mr.G.M.Khambate for respondent nos.1 to 4.

CORAM : D.B.BHOSALE, J.

DATED : 9TH NOVEMBER, 2006

ORAL JUDGMENT:

. This writ petition under Article 227 of the Constitution of India challenges the judgment and order dated 22.10.1991 rendered by the appeal court in Civil Appeal No.361/1989 filed by the respondents-tenants by which the judgment and order dated 23.2.1989 passed by the trial Court in Civil Suit No.1393/1985 filed by the petitioner-plaintiff

has been set aside.

2. The eviction suit was instituted mainly on two grounds, that is, default in payment of rent and bonafide need of the petitioner-plaintiff, hereinafter referred to as "the landlady, for use of the demised premises by her and the members of her family. The suit was decreed on both the grounds by the trial Court. However, the appeal court has allowed the appeal filed by the respondents-defendants, hereinafter referred to as "the tenants", and set aside the decree of eviction passed by the trial Court.

3. Ms.Mutalik, learned counsel for the petitioner confined her arguments to the ground of bonafide requirement of the landlady. The other ground regarding default of payment of rent is, therefore, not required to be considered. The case regarding bonafide requirement of the members of family of the landlady is based on the requirement of Prakash, the son of her pre-deceased daughter. The relevant provision under which the decree was sought is section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Act").

4. The trial Court, insofar as the ground of

bonafide requirement is concerned has categorically held that the requirement of the suit premises for personal occupation is genuine and greater hardship would be caused to the petitioner if the decree is not passed. From the judgment of appeal court, it is apparent that so far as factual aspect of the bonafide need of the landlady qua her grandson is concerned there was no dispute. The only contention was with respect to the need of the son of daughter. The appeal court has allowed the appeal holding that the grandson of the landlady - Prakash being a son of the daughter, cannot be treated as a member of her family and in any case he cannot be treated as a landlord as contemplated by section 13(1)(g) of the Act. The appeal court has further observed that Prakash is not owner of the suit property and that the landlady had not let out the premises on his behalf. In other words, the appeal court has allowed the appeal solely on the ground that Prakash being the son of pre-deceased daughter of the landlady, he has no right, title or interest in the suit property as a landlord as contemplated by section 13(1)(g) of the Act. In view thereof the scope of the present writ petition is confined to the question whether the son of the pre-deceased daughter, who is brought up by grandmother, could be treated as a member of her family and whether such landlady - grandmother can

claim possession of the demised premises for his benefit. In other words, whether a landlady can claim possession of the demised premises under section 13(1)(g) of the Act for the benefit of the son of predeceased daughter, who is brought up by her after the death of her daughter.

5. The factual matrix that may be necessary and relevant for answering the question raised in the writ petition is as follow: The petitioner is a landlady, while respondents-defendants are monthly tenants in the suit premises admeasuring 12’ X 30’ bearing C.T.S.No.1040, Budhwar Peth, Pune (for short "the suit premises"). Admittedly, the suit premises is commercial premises where the respondents-tenants have been doing cloth business. The rent of the premises is Rs.50/- per month plus Rs.2.25 taxes per month plus education cess. Hasanbhai - original tenant died in 1983. The respondents are the heirs of deceased - Hasanbhai. The landlady claims that her family is a big family, consisting of her daughter and her children and the children of the pre-deceased daughter. Prakash, the son of the pre-deceased daughter is matriculate and has completed ITI course. He was serving in Accurate Engineering Co. in Hadapsar. He had lost that job in 1983. The termination letter dated 11.9.1983 is placed on

record. Since then he is unemployed and, therefore, she claims possession of the suit premises for the benefit of Prakash to earn his livelihood. In other words, the case set up by the landlady is that she requires the suit premises for the purpose of setting up a new business, which would be managed by Prakash, so as to have a running source of income for him, which was necessary for the benefit of the entire family. The case regarding bonafide requirement of the landlady is thus based on the requirements of her grandson for setting up his business in the suit premises. The landlady has also stated that greater hardship would be caused to her if the suit is not decreed. The findings on the issue of requirement of the premises and hardship were not seriously challenged in the appeal and even the appeal court did not upset those findings. As stated earlier, what was being challenged before the appeal court was only the right of Prakash, who, according to the tenants, being the son of pre-deceased daughter of the landlady cannot be treated as a member of her family of the landlady and his requirement is not the requirement of the landlady within the meaning of section 13(1)(g) of the Act.

6. Ms.Mutalik, learned counsel for the landlady at the outset, submitted that Prakash and his siblings

were minor when their mother died. It appears that the mother of Prakash was deserted by her husband and he never looked after his children. They were brought up by the landlady. This case of the landlady has not been disputed by the tenants either in their pleadings or while leading evidence or cross examining the witness of the landlady. Ms.Mutalik, learned counsel for the petitioner placed heavy reliance upon the judgment of **Dwarkaprasad Vs. Niranjan and Another (2003) 4 Supreme Court Cases 549** to contend that the expression "occupation by myself" includes the son of pre-deceased daughter particularly in view of the fact that after the death of the mother of Prakash, he and his siblings were brought up by the landlady. Mr.Khambate, learned counsel for the respondents, however, submitted that in any case Prakash cannot be treated as a member of the landlady's family and his requirement would not amount to the requirement of the landlady as contemplated by section 13(1)(g) of the Act. The expression "for occupation by himself" cannot be stretched to measure the requirement of the son of landlady's daughter.

7. The rent legislations are meant for the benefit of the tenants but the rent statues contain exceptions in favour of the landlord which confer upon him a right to evict the tenant, the most important

being to ensure that he gets payment of rent regularly and promptly and that in case the tenanted premises is required by him for his personal need, he is able to get its possession from the tenant. So the provision regarding eviction of tenant meet the personal requirement of the landlord with respect to the premises is a provision for the benefit of the landlord. The Supreme Court in **Dwarkaprasad's case** (supra) considered the question that should the provisions contained in section 13(1)(g) of the Act be construed strictly so as to confine it to the requirement of the landlord alone or can it be extended to include the requirement of members of the landlord's family. In that case the possession was sought for the benefit of landlord's son and brother. The High Court had taken the view that since the plaintiff-landlord therein was the sole owner of the property he could not plead the requirement of his brother as a ground of eviction, that is, no eviction decree could be passed for the requirement of the brother of the plaintiff. The High Court, in that case, had further observed that there was no warrant for taking into consideration the need of the brother of the landlord who have no interest in the suit premises. Similar arguments, in our case, were advanced by Mr.Khambate, learned counsel for the tenants. The Supreme Court, however, decreed the suit

in respect of the entire premises holding that the landlord can legitimately seek eviction of the tenant if he is in need to settle his son and his younger brothers in business. In short, the Supreme Court held that the ground of eviction contained in clause (g) of section 13(1) of the Act has to be liberally construed. Confining it to the landlord alone would defeat the very object of the provision. The Supreme Court while allowing the appeal filed by the landlord has considered various other judgments while construing the expression "himself" as appeared in clause (g) of section 13(1) of the Act. A brief reference to some of those judgments would be necessary.

8. In **Institute of Radio Technology Vs. Pandurang Baburao AIR 1946 Bombay 212** the expression "own occupation" in Bombay Rent Restrictions Act, 1939 was under consideration. It was argued on behalf of the tenant that this meant the premises must be required by the landlord for his occupation. Repelling the argument it was observed that the words "his own occupation" mean occupation of himself and all persons who are dependent on him. The landlord had appeared as a witness in this case and had stated that his family consisted of his son, his widowed sister, her two daughters, two daughters of his

daughter and his cousin. The Court was satisfied that those persons were the plaintiff's dependants and therefore, were entitled to live along with him. In the circumstances, it was observed that the word "himself" occurring in the Act, has to be read as himself and members of his family.

9. The Division Bench of this court in **Balabhadra Beharilal Vs. Premchand Lalchand** was considering the need of the widowed daughter and her children as members of the landlord's family. The following observations in paragraph 3 of the judgment would be relevant:

> "3. The main point canvassed before us was that **the need of the widowed daughter and her children must be deemed to be the need of the landlord**. In our opinion, the contention of the petitioner is correct and must be upheld. No doubt, after marriage the daughter passes out of the father's family and goes into that of the husband. But the fact of marriage does not serve the blood relationship which exists between a father and his daughter. The existence of this relationship does give rise to certain moral obligations. Where, **in pursuance of such moral obligations a father affords support to his daughter and her children their needs become his needs**."
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> (emphasis supplied)

10. The Supreme Court in **Baldev Sahai Bangia V. R.C.Bhasin (1982) 2 SCC 210** was considering the provisions under clause (d) of section 14(1) of Delhi Rent Control Act. The case under consideration was to

the effect that if a premises let for residence is not occupied by the tenant or any member of his family for a period of six months immediately preceding the date of filing of eviction application, the landlord is entitled to a decree of eviction. The question arose whether in the facts of that case it could be said that neither the landlord nor any members of his family was residing in the tenanted premises for the past six months. The Supreme Court held that word "family" has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members who are actually living together in the same house.

11. It is, thus, clear that word "family" must always be liberally and broadly construed so as to include near relations of the head of the family. It would include not only the members of landlord’s family but also those persons who are dependent on him, whose responsibility he has accepted and are entitle to live along with him. The need of widowed or divorced or deserted daughter or her children living with the landlord, therefore, must be deemed to be the need of landlord. In our case, it is clear and has not been disputed that when the mother of Prakash died all her children including Prakash were minor and they were brought up by the grandmother - landlady and

that they all were residing with her. This part of the evidence has not been rebutted and/or the tenants had not led any evidence to contradict or dispute this plea. That apart, Mr.Khambate, learned counsel for the respondent has not disputed the case set up by the landlady that Prakash and his siblings were residing with her at the relevant time. Moreover, the manner in which the case was placed before the appeal court and subsequently before me also clearly suggests that the only objection raised on behalf of the tenant was a legal objection that the need of the son of daughter of landlady cannot be encompassed within clause (g) of sub-section (1) of section 13 of the Act. It is further clear that the grandmother - landlady had accepted the responsibility of all the children of her deceased daughter and they were raised by her. It is true that after marriage the daughter passes out of father’s family and goes into that of her husband. However, that by itself does not sever blood relationship which exists between the father/mother and their daughter, particularly in a case where the daughter has been deserted by her husband and is deceased leaving behind the minor children and if the children are brought up by grandparents. Considering the overall facts and circumstances of the case, by no stretch of imagination it could be stated that Prakash is not a member of the petitioner’s family and that

she cannot seek possession of the suit premises for the benefit of grandson or that his requirement cannot be considered under section 13(1)(g) of the Act. Mr.Khambete, learned counsel for respondent nos.1 to 4 was unable to dispute the aforesaid legal position. In the circumstances I have no hesitation in holding that the landlady can legitimately seek eviction of the tenants and seek possession of the demised premises to settle her grandson. In the circumstances the petition succeeds. The judgment of appeal court dated 22.10.1991 is quashed and set aside. The decree passed by the trial Court dated 23.2.1989 stands confirmed. Rule is accordingly made absolute with costs.

12. At this stage Mr.Khambate, learned counsel for respondent nos.1 to 4 prayed for stay of this judgment for a period of twelve weeks. Ms.Mutalik, learned counsel for the petitioner, however, stated that instead of granting stay, as prayed for, some reasonable time may be given to vacate the suit premises, subject to filing of the undertaking. Mr.Khambate submits that if the tenants file an undertaking that may curtail right of the tenants to carry the matter further. In view of the submissions made by learned counsel for the parties. I pass the following order:

. The tenants are allowed to vacate the premises within four months from the date of this order subject to filing of the usual undertaking by all the adult members in the family of the tenants, in this court within four weeks from today failing which the petitioner shall have right to execute the decree against the respondents. If the tenants file the undertaking in this court within the time stipulated with an advance copy to the petitioner-landlady, she shall not execute the decree for a period of four months from today. It is made clear that the undertaking shall not curtail the right of the tenants to carry the matter further, if they so desire.

(D.B.Bhosale, J.)